



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 13, 1996

Ms. Lois A. Wischkaemper
Jones, Flygare, Galey, Brown & Wharton, P.C.
1600 Civic Center Plaza
Lubbock, Texas 79401

OR96-2389

Dear Ms. Wischkaemper:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102406.

The Lubbock County Hospital District (the "hospital district"), which you represent, received a request for "copies of all correspondence between [the hospital district], Lee Lewis Construction, and Stover Electric regarding the formal complaints brought forth by Stover Electric employees." You claim that the requested information, which you have submitted to this office for review, is excepted from disclosure pursuant to sections 552.103 and 552.110 of the Government Code.

Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

The request for information is dated August 26, 1996. You have not indicated the date on which the hospital district in fact received the request for information. However, you did not request a decision from this office until September 18, 1996, presumably more than ten days after

the hospital district received the request. Therefore, unless the requested information is confidential by law or other compelling reasons exist as to why the information should not be made public, you must release the information.

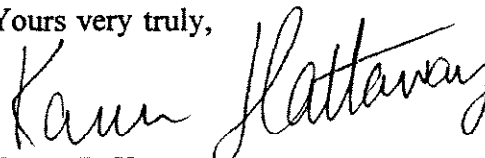
We note that section 552.103 is a discretionary exception, and a governmental body waives its section 552.103 protection by failing to timely invoke the exception. *See* Open Records Decision No. 541 (1990). Therefore, the hospital district's section 552.103 claim does not constitute a compelling reason to overcome the presumption that information at issue is public. On the other hand, section 552.110 is designed to protect the interests of third parties. Thus, a valid section 552.110 claim overcomes the presumption that the requested information is public. Open Records Decision No. 552 (1990) at 1.

Pursuant to section 552.305 of the Government Code, we notified Stover Electric of the request for information and of its opportunity to claim that the information at issue is excepted from disclosure. Stover Electric did not respond to our notification.

As neither the hospital district nor Stover Electric has provided us with written comments explaining how section 552.110 may apply to the information at issue, we have no basis upon which to pronounce the information protected by section 552.110. Open Records Decision No. 363 (1983). Accordingly, we conclude that the information is not excepted from required public disclosure pursuant to section 552.110 and must be released to the requestor unless other compelling reasons exist as to why the information should not be made public.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 102406

Enclosures: Submitted documents

cc: Mr. Feliciano Garcia, Jr.
Organizer
International Brotherhood of Electrical Workers
L.U. No. 850
Lubbock, Texas 79415
(w/o enclosures)

Mr. Tom Brown
Stover Electric
P.O. Box 11357
Lubbock, Texas 79408
(w/o enclosures)